

LD 2116-08-2480
RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Pacific Gas & Electric Company
Attn: Ms. Linda Chinn
77 Beale Street, 32nd Floor
San Francisco, California 94105
Telephone: ()



Nevada, County Recorder
Jewett-Burdick
DOC- 2001-0037715-00

Check Number 1667
Friday, OCT 19, 2001 09:34:00
REC \$16.00 MIC \$1.00 AUT \$12.00
SBS \$11.00
Ttl Pd \$40.00 Nbr-0000116411
ENM/EM/1-12

LD # 2116-08-2480

(Space Above For Recorder's Use)

**COVENANT AND AGREEMENT
TO RESTRICT USE OF PROPERTY**
(APN 09-220-01; 09-220-02; 09-220-03)
(403 Idaho-Maryland Road, Grass Valley, California)
*This instrument is an environmental restriction
pursuant to California Civil Code Section 1471*

THIS COVENANT AND AGREEMENT (this "Covenant") is made as of the
22 day of May 2001 by Pacific Gas and Electric Company, a California Corporation
("Covenantor"), and the Regional Water Quality Control Board, Central Valley Region
("CVRWQCB"), a California Public Agency ("Covenantee"), with reference to the following
facts:

A. Covenantor is the owner of real property described more particularly in Exhibit A
attached hereto (the "Property").

B. Past industrial and manufacturing operations conducted at the Property by
Covenantor and its predecessors-in-interest resulted in the release of certain contaminants into
the soil and groundwater.

C. A former manufactured gas plant which operated on the Property between 1902
and 1946 was dismantled in the 1970's. In these historic operations, gas was manufactured from
petroleum (mainly crude oil) and stored onsite in holders for distribution. The gas manufacturing
process resulted in residues in soils that are comprised of oily petroleum hydrocarbons and
polynuclear aromatic hydrocarbons (PAHs). The majority of the Property is covered with
reinforced concrete or asphalt-like material. There is one building, which remains on the
Property.

D. Between 1989 and 2000, the CVRWQCB and the California Office of
Environmental Health Hazard Assessment oversaw and reviewed studies of the site by the

owners. These studies included a remedial investigation (Integrated Data Report for Grass Valley 2 Former Manufactured Gas Plant Site, August 6, 1999, Tetra Tech), a Baseline Human Health and Ecological Risk Assessment (August 13, 1999), a Remedial Feasibility Study (April 11, 2000, Tetra Tech), and a Remedial Implementation Plan (PG&E, July 26, 2000). Each of these studies has been approved by the CVRWQCB. Groundwater and surface water monitoring also has been conducted during these studies, and is scheduled to continue under oversight of the CVRWQCB until results indicate that it is no longer necessary. These studies led to the following conclusions regarding the manufactured gas plant residues:

(i) The building, concrete yard, and paving at the Property act as a cap that prevents contact with soil containing gas plant residues.

(ii) Detailed studies of the potential health risk from the gas plant residues beneath the cap indicate that the residues do not pose a health risk.

(iii) Water quality monitoring indicates that capped gas plant residues do not pose a significant risk to water quality or the environment. Wolf Creek water quality is not impacted. The cap protects groundwater and Wolf Creek by preventing rainwater infiltration through the gas plant residues.

E. In order to protect present and future public health and safety, Covenantor desires and intends to ensure that the Property is used in a manner that avoids potential harm to persons, the environment or property which may result from the presence of contaminants on the Property.

F. This Covenant is given to bind Covenantor and successive owners of the Property to restrictions on the future use of the Property, which restrictions are for the benefit of the Covenantant.

ARTICLE 1 GENERAL PROVISIONS

1.1 Provisions to Run with the Land. This Covenant sets forth protective covenants, conditions and restrictions ("Restrictions"), upon and subject to which the Property and every portion thereof shall be held, used, improved, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The Restrictions shall run with the Property, and shall apply to and bind Covenantor and all successors in interest therein. The Restrictions are imposed upon the entire Property except as otherwise expressly stated herein.

1.2 Deemed Concurrence. All persons or entities acquiring any interest in the Property or any portion thereof shall be conclusively deemed by such acquisition, lease or possession to have irrevocably agreed to the Restrictions for and among themselves and their heirs, successors, assignees, agents, employees, licensees and lessees of such owners, heirs, successors, and assignees. In the event an owner of all or a portion of the Property (including

Covenantor) conveys fee title to some portions of the Property to third parties but retains an interest in other portions of the Property, upon the conveyance of the portion(s) of the Property to third parties, the conveying owner shall forever be released and relieved of any further obligation or liability under the Covenant with respect to the portion of the Property so conveyed for events arising from and after the date of such transfer. Upon any owner's sale or transfer of its entire interest in the Property, such conveying owner (including Covenantor) shall forever be released and relieved of any further obligation or liability arising under this Covenant for events arising from and after the date of such transfer. Upon the termination of the leasehold interest of any occupant of the Property, such occupant shall forever be relieved of any further obligation or liability thereafter arising under this Covenant.

1.3 Incorporation into Deeds and Leases. The Restrictions are hereby deemed to be incorporated by reference into each grant, creation or conveyance of any interest in the Property or portion thereof occurring after the date this instrument is recorded in the Official Records of Nevada County, California, whether or not referred to in the instrument effecting such grant, creation or conveyance.

ARTICLE 2 DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

2.1 Restrictions on Use. Covenantor shall restrict the use of the Property as follows:

No owner or occupant of this Property or any other party having custody or control of this Property shall build any of the following structures on the Property: (a) a residence or residences, (b) hospital for humans, (c) a school for persons under 21 years of age, (d) day care center for children, and (e) any permanently occupied human habitation (including hotels and motels which are used as permanent residences; hotels, motels, and temporary lodging facilities which allow for temporary and/or extended stays are permitted), unless such person has first obtained written consent in each instance from the CVRWQCB. The Property, or any portion thereof, may be used for commercial, retail (including restaurants and service stations), office, industrial or other business purposes, without the written consent of the Board.

No owner or occupant of this Property or any other party having custody or control of this Property by any means shall excavate, grade, dig, drill or bore the soils in, on or under the Property, unless such person has first obtained written consent in each instance from the CVRWQCB.

2.2 Notice in Agreements. Covenantor shall include in all deeds, leases or licenses of any portion of the Property the following statement:

"The [sold/leased/licensed] property is subject to a use limitation based on past environmental contamination of a portion of the property. While that contamination has been substantially remediated, to protect public health and safety, the property is subject to a covenant that runs with the land which restricts the use of the property. The Regional Water Quality Control Board, Central Valley Region is the Covenantee of this covenant. This statement is not a declaration that a hazard exists at the property."

ARTICLE 3 ENFORCEMENT AND MORTGAGEE PROTECTION

3.1 Enforcement. This Covenant is entered into for the express benefit of Covenantee. Covenantor and/or Covenantee may enforce this Covenant or recover any and all damages recoverable under applicable law for breach in an action at law or in equity.

3.2 Mortgagee Protection. Notwithstanding any provision of this Covenant, no breach of the Restrictions, nor the enforcement of any provisions contained in this Covenant shall affect, impair or defeat the lien or charge of any duly recorded mortgage or deed of trust encumbering any portion of the Property, or affect, impair, or defeat the interest of the mortgagee, or its successors or assigns (the "Mortgagee") pursuant to such a mortgage, provided that such mortgage is made in good faith and for value. All of the Restrictions shall be binding upon and effective against any owners whose title is derived through foreclosure, deed in lieu of foreclosure, or trustee's sale during the period of their ownership.

3.3 Nothing in this Covenant is intended to limit the authority of the Covenantee under the California Water Code or other applicable laws under its jurisdiction with respect to the property."

ARTICLE 4 VARIANCE AND TERMINATION

4.1 Variance. Covenantor, or any other owner of the Property or any portion thereof, may apply to Covenantee for a written variance from or modification of this Covenant. Covenantee's consent thereto shall not be unreasonably withheld.

4.2 Termination. Covenantor, or any other owner of the Property or any portion thereof or, with Covenantor's consent, any occupant of the Property, may apply to Covenantee for a termination of the Restrictions as they apply to all or any portion of the Property owned or occupied by the applicant. Covenantee's consent thereto shall not be unreasonably withheld.

4.3 Term. Unless modified or terminated in accordance with this Article or by Section 5.5 below, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE 5 MISCELLANEOUS

5.1 No Dedication Intended. Nothing herein shall be construed to be a grant or dedication, or offer to grant or dedicate, the Property or any portion thereof to the public for any purposes whatsoever.

5.2 Notices. All notices, demands, requests, consents, approvals, waivers, releases, modifications, terminations or other communications relating to this Covenant shall be in writing and shall be deemed effective: 1) when delivered, if personally delivered to the person being served or official of a government agency being served, or 2) three business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

To Covenantor: Pacific Gas & Electric Company
Attn: Ms. Linda Chinn
77 Beale Street, 32nd Floor
San Francisco, California 94105

With a required
copy to: Pacific Gas & Electric Company
77 Beale Street, 28th Floor
San Francisco, California 94105
Attn: Juan M. Jayo, Esq.
(Mailing address: P.O. Box 7442,
San Francisco, California 94120)

To Covenantee: Regional Water Quality Control Board, Central Valley Region
3443 Routier Road, Suite A
Sacramento, California 95827-3003

Any party may change its address by notice to the other parties as provided above.

5.3 Partial Invalidity. If any portion of the Covenant is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not part of the Covenant.

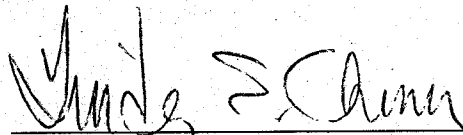
5.5 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto, except as provided in Article 1.2 and of Covenantee. If the jurisdiction of the Covenantee over environmental matters relating to the Property is at any time delegated to a different governmental agency, such agency shall succeed to the Covenantee's rights hereunder. If at any time no governmental agency has jurisdiction over environmental matters relating to the Property, this Covenant shall thereafter be of no further force or effect. As used herein, the terms Covenantor and Covenantee shall include their successors and assigns.

5.6 Complete Agreement. This Covenant evidences the complete agreement among the Covenantee and the Covenantor, and supersedes all prior offers, contracts, agreements and arrangements between the parties concerning the Property. Except as provided in Article 4, this Covenant may not be changed, modified or rescinded except in a writing, that is recorded in the official records of Nevada County, and which is signed and acknowledged by Covenantee and the party owning the portion of the Property as to which such change, modification or rescission will apply, and any attempt at actual or oral modification shall be void and of no effect.

5.7 Counterparts. This Covenant may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute but one and the same Covenant.

IN WITNESS WHEREOF, Covenantor and Covenantee have executed this Covenant as of the date set forth above.


PACIFIC GAS AND ELECTRIC COMPANY



Linda Chin

Vice President - General Services

CENTRAL VALLEY REGIONAL WATER
QUALITY CONTROL BOARD



By: GARY M. CARLTON

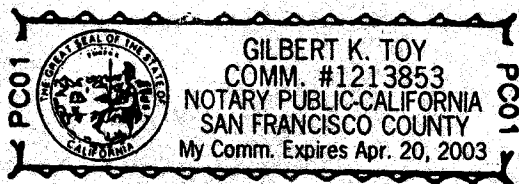
Title: Executive Officer

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

On May 12, 2001, before me, GILBERT K. TOY personally
appeared Linda Chinn

personally known to me - **OR** -

~~proved to me on the basis of satisfactory evidence~~ to be
the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that
he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted,
executed the instrument.



WITNESS my hand and official seal.

Gilbert K. Toy

STATE OF CALIFORNIA

COUNTY OF Sacramento

} SS.

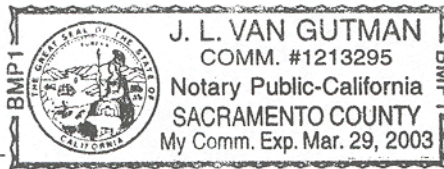
On Oct. 11, 2001 before me, the undersigned, a Notary Public for said State, personally appeared _____

- Gary M Carlton

[] personally known to me -OR- [x] proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

J. L. Van Gutman
Signature

**CAPACITY CLAIMED BY SIGNER**

- [] Individual(s) Signing For Oneself/Themselves
- [] Corporate Officer(s) of the Above Named Corporation(s)
- [] Guardian of the Above Named Individual(s)
- [] Partner(s) of the Above Named Partnership(s)
- [] Attorney(s)-in-Fact of the Above Named Principal(s)
- [] Trustee(s) of the Above Named Trust(s)

Other representing
Central Valley Regional
Water Quality Control Bd.

STATE OF CALIFORNIA

COUNTY OF _____

} SS.

On _____ before me, the undersigned, a Notary Public for said State, personally appeared _____

[] personally known to me -OR- [] proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

CAPACITY CLAIMED BY SIGNER

- [] Individual(s) Signing For Oneself/Themselves
- [] Corporate Officer(s) of the Above Named Corporation(s)
- [] Guardian of the Above Named Individual(s)
- [] Partner(s) of the Above Named Partnership(s)
- [] Attorney(s)-in-Fact of the Above Named Principal(s)
- [] Trustee(s) of the Above Named Trust(s)
- [] Other _____

Order No: 88813-to 2ND AMENDED

EXHIBIT "A"

The land herein referred to is situated in the State of California, County of Nevada, and is described as follows:

PARCEL 1: All that portion of Lot No. 1 of Block No. 3 of the Townsite of East Grass Valley, a said Lot and Block are designated upon the Official Map of said townsite of East grass Valley, as made by Samuel J. Alderman in the year 1890, described as follows:

Beginning at the Northwest corner of said Lot 1 in the Southerly line of the Idaho Maryland Road, said point also being the most Northerly corner of the land described in the Deed dated March 6, 1926, recorded March 16, 1926, in Book 140, of Deeds, at page 159, executed by Josiah Sherman, Jr. to Pacific Gas and Electric Company, a corporation, thence from said point of beginning along the Easterly lines of the land described in said Deed, also being the line common to Lots 1 and 3 of said Block 3, the following two courses and distances, South 00° 33' East 23.0 feet and South 43° 43' East 79.0 feet to the Southwest corner of said Lot 1, thence North 89° 30' East 215.0 feet, more or less to a point in the West line of the land described in the Deed dated January 19, 1952, recorded January 22, 1952, in Book 170 of Official Records, at page 413, executed by John L. Bennett and Ruth F. Bennett, husband and wife, to Pacific Gas and Electric Company, a California Corporation, thence North 00° 37' East 121.82 feet more or less to the Northwest corner of the land described in the deed recorded in Book 170 of Official Records, at page 413, said corner being the Northerly line of said Lot 1 and the Southerly line of Idaho Maryland Road, thence along said Northerly line of Lot 1 and the Southerly line of said idaho Maryland Road to the point of beginning.

The above described land being the same land as described in the following Deed dated May 30, 1901, recorded July 17, 1901, in Book 95 of Deeds, at page 371, executed by J. H. Coughlin and Lillie Coughlin, his wife to the California Central Gas and Electric Co., a corporation, and the Deed dated April 12, 1928, recorded May 4, 1928, in Book 145 of Deeds, at Page 245, executed by Josiah Sherman, Jr., to Pacific Gas and Electric Company, a corporation.

PARCEL 2: The Parcel of land conveyed by John L. Bennett and wife to Pacific Gas and Electric Company by Deed dated January 19, 1932, and recorded in the office of the said County Recorder in Book 170 of Official Records, at Page 413, and therein described as follows:

Order No: 88813-to 2ND AMENDED

Description [Continued]

Beginning at the 3 inch galvanized pipe set in concrete marking the Northeast corner of that certain parcel of land quitclaimed by Josiah Sherman, Jr. to Pacific Gas and Electric Company by Deed dated April 12, 1928, and recorded in the office of the County Recorder of said County of Nevada in Book 145 of Deeds, at Page 245, from which the 12 inch by 12 inch scribed stone in a rock mound, marking the North quarter corner of Section 26, Township 16 North, Range 8 East, M.D.B.&M., bears North 9° 42-1/2' East 1346.79 feet distant and running thence South 82° 32' East along the Southerly boundary line of Idaho Maryland Road, 64.52 feet to a 1/2 inch iron pin, thence continuing along the last mentioned boundary line South 79° 32' East 8.86 feet to a 1-1/4 inch iron pipe; thence South 0° 37' West parallel with the Easterly boundary line of the parcel of land quitclaimed by said Deed dated April 12, 1928, 133.16 feet to a 1 inch iron pipe; thence North 76° 54' West 74.60 feet to an iron bolt in the Southerly prolongation of the Easterly boundary line of the parcel of land quitclaimed by said Deed dated April 12, 1928, thence North 0° 37' East along said prolongation and the Easterly boundary line of the parcel of land quitclaimed by said deed dated April 12, 1928, 126.30 feet, more or less, to the point of beginning, being a portion of Lots 1 and 3 of Block 3, as said Lots and Block are delineated and so designated upon the Official Map of the Townsite of East Grass Valley made by S. J. Alderman in the year 1890.

PARCEL 3: The Parcel of land conveyed by Josiah Sherman, Jr., to Pacific Gas and Electric company by Deed dated March 6, 1926, and recorded in the office of the said County Recorder in Book 140 of Deeds, at Page 159 and therein described as follows:

All that portion of Lot numbered 3 in Block numbered 3 of the Townsite of East Grass Valley, as said Lot and Block are designated upon the Official Map of the Townsite of East Grass Valley made by S. J. Alderman in the year 1889, described as follows, viz:

Commencing at the Northeast corner of Lot numbered 1 in said Block numbered 3 of said Townsite of East Grass Valley, thence along the Northerly boundary line of said Lot 3, South 75° 40' West 60 feet to a 1/2 inch pipe; thence South 66.2 feet to a 1/2 inch iron pipe; thence North 89° 30' East 112.5 feet to the Southwest corner of said Lot Numbered 1, thence along the line common to said Lots 1 and 3, North 43° 43' West 79 feet; thence North 0° 38' East 23 feet, more or less to the point of beginning.

Order No: 88813-to 2ND AMENDED

Description [Continued]

EXCEPTING from said parcels all that portion thereof conveyed to the County of Nevada by Deed recorded March 17, 1978, in Book 936, Official Records, Page 445.

PARCEL 4: All that portion of Lot numbered 1 and Lot number 3, in Block Number 3 of the townsite of East Grass Valley, as said lot and block are designated upon the Official Map of said townsite of East Grass Valley as made by Samuel J. Alderman in the year 1890, described as follows, to-wit:

Beginning at the Northeast corner of the lot herein described, as iron pipe one half inch diameter set in the ground at the South side of the Idaho Maryland Road from which the one quarter section corner of the North boundary of Section 26, Township 16 North, Range 8 East, M.D.B.&M., bears the following two courses and distances, South $83^{\circ} 00'$ East 100 feet, thence North $1^{\circ} 25'$ West 1362.20 feet distant; thence from the said place of beginning North $79^{\circ} 30'$ West 99.50 feet to a steel bar one half inch diameter set in the ground at the South side of the said Idaho Maryland Road; thence North $82^{\circ} 30'$ West 64.52 feet to the galvanized iron pipe fence corner three inches diameter, at the South side of the said Idaho Maryland Road and being identical with the Northeast corner of the lot owned by Pacific Gas and Electric Company, thence along the wire fence on the line common to the lot herein described and the said Pacific Gas and Electric Company's lot South $0^{\circ} 39'$ West 126.30 feet to an iron bolt set in the ground at the South side of a low rock wall and being at the North side of Wolf Creek, from which a galvanized iron pipe fence corner three inches diameter at the Southeast corner of the said Pacific Gas and Electric Company's lot, as enclosed by fence, bears North $0^{\circ} 39'$ East 4.48 feet distant; thence South $76^{\circ} 52'$ East 128.07 feet to a wooden hub set at the South edge of a low rock wall at base of old fence and being at the North side of Wolf Creek; thence North $86^{\circ} 03'$ East 19.08 feet to the Southeast corner of the lot herein described, a point at the North side of Wolf Creek, thence North $8^{\circ} 41'$ East 128.97 feet to the Northeast corner and the place of beginning.

EXCEPTING THEREFROM that certain portion thereof conveyed by the Deed dated January 19, 1952, recorded January 22, 1952, in Book 170 of Official Records, at page 413, executed by John L. Bennett and Ruth F. Bennett, husband and wife to Pacific Gas and Electric Company, a California Corporation, as follows:

Order No: 88813-to 2ND AMENDED

Description [Continued]

Beginning at the 3 inch galvanized pipe set in concrete marking the Northeast corner of the certain parcel of land quitclaimed by Josiah Sherman, Jr. to P. G. & E., Co., by deed dated April 12, 1928 recorded in Book 145 of Deeds, Page 245, from which the 12 inch by 12 inch scribed stone in a rock mound, marking the North quarter corner of Section 26, township 16 North, Range 8 East, bears North 9° 42 1/2' East 1346.79 feet distant; and running thence South 82° 32' East along the Southerly boundary line of Idaho Maryland Road 64.52 feet to a 1/2 inch iron pin; thence continuing along the last mentioned boundary line South 79° 32' East 8.86 feet to a 1 1/4 inch iron pipe; thence South 0° 37' West parallel with the Easterly boundary line of the Parcel of land quitclaimed by said deed dated April 12, 1928, 133.16 feet to a 1 inch iron pipe; thence North 76° 54' West 74.60 feet to an iron bolt in the Southerly prolongation of the Easterly boundary line of the parcel of land quitclaimed by said Deed dated April 12, 1928, thence North 0° 37' East along said prolongation and the Easterly boundary line of the parcel of land quitclaimed by said deed dated April 12, 1928, 126.30 feet more or less to the point of beginning.

PARCEL 5: All that portion of Lot 1 and of Lot 3, in Block 3, of the Townsite of East Grass Valley as aid Lots and Block are designated upon the Official map thereof, described as follows:

Commencing at a point on the Southerly line of the Idaho Maryland Road, the Northeasterly corner of the land herein described from which the North one quarter section corner of Section 26, Township 16 North, Range 8 East, bears the following two successive courses, to-wit: South 83° 00' East 43.00 feet and North 1° 25' West 1362.00 feet; thence from said point of beginning and running along said Southerly line of road, North 83° 00' West 57.00 feet to a 1/2 inch diameter iron pipe; thence leaving said road line and running South 8° 41' West 128.97 feet to a point on the North side of Wolf Creek; thence North 86° 03' east 58.39 feet to the southeasterly corner of the land herein described; thence North 8° 41' East 117.87 feet to the point of beginning.

APN: 09-220-01; 09-220-02 & 09-220-03

North Valley Area
Sierra Division
T.16N, R8E, MDB&M
Section 26: SE of NW
Plat N-9

Fidelity National Title
Insurance Company
Preliminary Report, se:wp:8/11/98:88813

END OF DOCUMENT